STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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April 19, 1993

In Re: Transfer of Base Year Value to Replacement Dwelling.

Dear Mr. :

This is in response to your letter received on March 30, 1993, in which you requested our opinion regarding the requirements for transferring the base year value from an original residence currently receiving a homeowners' exemption to a newly constructed replacement dwelling under Cal. Const. Art. XIIIA, Section 2, and Revenue and Taxation Code Section 69.5 (Proposition 60).

Based on your letter and a telephone conversation with your co-worker Mr. C , you have a specific question concerning the requirements of Section 69.5 and request copies of pertinent letters and memos delineating our interpretation of those requirements. Accordingly, we have enclosed the following letters concerning this provision, as well as a copy of Section 69.5 for your edification:

Letter to Assessors	No. 87/71	September 11, 1987
	No. 88/10	February 11, 1988
	No. 82/50	March 23, 1982
Richard Ochsner Letter		February 7, 1992

As we understand your question, you are primarily concerned with whether or not the base year value of a qualified taxpayer's original property can be transferred to a newly constructed "Granny dwelling" on her daughter's property/land if she acquires a part interest in the daughter's land. In discussing the matter briefly with Mr. C , I pointed out that in order to qualify for relief under Section 69.5, a claimant who is otherwise eligible (by meeting the requirements of Section 69.5) must

"purchase" a replacement dwelling, rather than acquire it by gift or devise, and the replacement dwelling must be purchased or newly constructed within the specific time parameters contained in the statute.

I also explained the position we have taken with regard to the type of property included in the term "replacement dwelling." As defined in subdivision (g)(3) of Section 69.5, "replacement dwelling" is a "building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated." This language clearly indicates that a "replacement dwelling" includes both the dwelling and the land on which it is located.

Further, subdivision (g)(3) of Section 69.5 was amended in 1988 to provide that "land owned by the claimant" includes land for which the claimant holds a leasehold interest described in subdivision (c) of Section 61:

> 61. "Change in Ownership" includes ...
>
> (c)(1) The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), ...
>
> Only that portion of a property subject to such lease or transfer shall be considered to have undergone a change of ownership.
> For the purpose of this subdivision, for 1979-80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowner's exemption...which are on leased land have a renewal option of at least 35 years on the lease of such land, whether or not in fact such renewal option exists in any contract or agreement.

Accordingly, when the replacement dwelling is an improvement eligible for the homeowner's exemption located on leased land that is **not** owned by the claimant, the portion of the land on which the dwelling is situated is considered to be the "owned" land for purposes of Section 69.5. Thus, a claimant otherwise meeting all the requirements of Section 69.5 who constructs and owns a "Granny dwelling" eligible for the homeowner's exemption on leased land may transfer the base year value from her original dwelling and land on which her dwelling is situated to her replacement dwelling and leased (owned) land on which the replacement ("Granny") dwelling is situated. Please note however, that the total market value of her original property

will be compared to the total market value of the "Granny dwelling" and the portion of the land on which that dwelling is situated, regardless of the fact that she does not own the underlying land.

In the situation you pose, the claimant is proposing to construct and own a "Granny dwelling" and to purchase a fractional interest in her daughter's land. In this case, the express requirements of Section 69.5 may not be met since the claimant would only be purchasing a fractional interest in land already owned by others, not purchasing a fractional interest in land being acquired by claimant and others. Section 69.5 deals with the original property and the replacement dwelling as single integrated units. The definitions of these terms, found in subdivisions (g)(3) above, and (g)(4), refer to "a building, structure, or other shelter constituting a place of abode, whether real or personal property, which is owned and occupied by a claimant as his or her place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated." These definitions support the conclusion that the terms "original property" and "replacement dwelling" are intended to refer to the entire property as single integrated units and not to fractional interests in such property.

Thus, it has been our interpretation of Section 69.5 from the inception that the purchase of entire replacement dwellings and lands are contemplated and required. Where, for example, a 50 percent interest in a replacement dwelling was acquired by inheritance, and the remaining 50 percent interest was purchased from other heirs, we have concluded that the replacement property could not be considered to be "purchased" for purposes of Section 69.5. Logically, this analytical approach suggests that, since we treat the original property and replacement dwelling on a single-unit basis, anything less than a 100 percent purchase of the replacement dwelling and land will not qualify for the benefit.

Since the appropriate county assessor has the sole authority to implement Section 69.5, we strongly advise that you consult with that office as to the specific manner in which Section 69.5 will be applied to the facts of your particular situation. The views expressed in this letter are advisory only and are not binding upon the assessor who will ultimately determine whether or not your client qualifies under Section 69.5. Contrary to the above, were the assessor to conclude that the claimant's purchase of the fractional interest in her daughter's land could be considered a purchase of replacement land, the express requirements of Section 69.5 might still not be met, since the total market value of the original property would now be compared to the total market value of the "Granny dwelling" plus the total

market value of that portion of the land on which the "Granny dwelling" is situated, and hence, the "full cash value of the original property" might be less than the full cash value of the "Granny dwelling" plus the value of that land. (See Richard Ochsner's Letter enclosed.)

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Sincerely,

Kristine Cazadd

Kristine Cazadd
Tax Counsel

Enclosures

cc: Honorable Matthew K. Fong
Fourth District, Los Angeles

Honorable Kenneth Hahn
Los Angeles County Assessor
Mr. Steve Spears
Mr. John Hagerty
Mr. Verne Walton

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